A

PANTAI MEDICAL CENTRE SDN BHD v. FAREED REEZAL ARUND & ANOTHER APPEAL

B

COURT OF APPEAL, PUTRAJAYA
HAS ZANAH MEHAT JCA
SUPANG LIAN JCA
SEE MEE CHUN JCA
[CIVIL APPEAL NOS: W-02(NCVC)(W)-566-04-2020
& W-02(NCVC)(W)-572-04-2020]
29 DECEMBER 2021

C

Abstract – *In a medical negligence action, where the injuries caused (herein serious brain injury resulting in plaintiff being in vegetative state) has been proved and the hospital has been found solely liable, damages should be awarded for loss of earnings, special damages, value of care and for pain and suffering, and for loss of amenities of life et cetera; it should be noted, however, that in awarding such damages, once a multiplier therefor has been decided, there is no more logic to make a further deduction on the quantum awarded.*

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TORT: *Damages – Medical negligence – Claim for – Plaintiff suffered serious brain injury resulting in him being in persistent vegetative state – Issue of quantum – Life expectancy – Loss of earnings – Pain and suffering – Value of life*

F

There were two appeals herein, both on the issue of quantum, which arose from the same medical negligence action. In Appeal 566, the appellant was Pantai Medical Centre ('D1'). In Appeal 572, the appellant was Fareed Reezal Arund suing *via* his wife and litigation representative ('plaintiff'). The plaintiff was 44 years old when he suffered serious brain injury in D1's hospital, which resulted in him being in a persistent vegetative state ('PVS'). PVS is a condition described as 'a clinical condition whereby the patient is not aroused and not aware of the surrounding and the cause of it is a brain injury.' The issues that arose were, *inter alia*, (i) both the parties' quantum experts differed on the life expectancy of the plaintiff; the plaintiff's expert, SP1, gave it as nine to 20 years, while D1's expert, SD8, gave it five to seven years and reversed it to nine to 12 years; (ii) the High Court Judge ('HCJ') had deducted 15% from the life expectancy of 16 years; (iii) the HCJ had awarded RM30,000 per month from 19 May 2015 to 15 January 2016 while the plaintiff had claimed a sum of RM74,200 per month for loss of earnings; and (iv) damages regarding value of life, pain and suffering and loss of amenities of life.

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Held (allowing parts of plaintiff's and D1's appeals)
Per See Mee Chun JCA delivering the judgment of the court:

(1) SP1 relied on two medical literatures for deriving a life expectancy of nine to 20 years. The first was *Zasler et al 2007* ('*Zasler*') where a person with PVS in the age group of 40 years may live for another nine years. The second literature relied on was a study by *Jurgen Graf et al 2008* ('*Graf*') which looked at the long term survival of patients following intensive care unit admission after cardiac arrest and estimated to live for another 20 years. The expert report of SD8 stated that the life expectancy of PVS based on literature is five to seven years from the event and less than 20% chance to live beyond ten years. Her personal clinical experience of managing patients with disordered consciousness is between the range of five to 12 years and concluded by stating 'life expectancy five to seven years'. The explanation given by SP1 that *Graf* was specific to the plaintiff's case was probable, in that, the study included patients with severe neurological disorder with GSC of less than six. *Graf* could thus be accepted as the basis for a life expectancy with a range up to 20 years. *Graf* was the relevant supporting medical literature. The HCJ, in taking a more conservative view, instead of using 20 years as per SP1, used a conservative 16. However, having already started with the conservative value of 16 years, the HCJ went on to deduct another four years. This was plainly wrong as that was without basis where after, having already started at the lower range value to reflect the conservative view, the four years should not be deducted. The life expectancy should therefore be 16 years. (paras 6, 7, 14, 24 & 25)

(2) The HCJ had deducted 15% from the life expectancy of 16 years. However, once a multiplier had been decided there was no logic or justice in making a further judicial account. No deduction ought to be made when SP1 had already factored in the various contingencies. Factors that would effect life expectancy and survival time was multifactorial, which included *inter alia* respiratory condition, cardiac status, seizures and level of care given. Damages are assessed on a once and for all basis. To now make a one-third deduction would be a further deduction when the contingencies in arriving at the life expectancy by reference to *Graf* had already been factored in. The HCJ was plainly wrong to have made the 15% deduction. (paras 26, 27, 34 & 36)

(3) The plaintiff was an Executive Director in Innovative Swift Sdn Bhd ('Innovative') and held 92% shares in it. The evidence at trial was clear in that no documents such as salary slips, bank statements or income tax declarations were produced. The plaintiff's wife, SP2, admitted to that and it was also in her evidence that his last drawn salary was RM15,500 per month. As against this was the plaintiff's 92% shareholding in Innovative which extrapolated from the company's profits for the period of April 2014 to May 2015 of RM1,772,802.54 which meant his share

was RM1,531,595.34 or a monthly sum of RM127,635.95. The plaintiff sought the amount of RM74,200 per month on the basis this was the amount pleaded for loss of earnings. Although there were no documents to prove a monthly salary of RM15,500 and allowances, the fact that he was an Executive Director in Innovative was not disputed. He must surely have been earning a certain amount of salary to support and sustain a family and maintain a station in life as befitted an Executive Director. Thus the sum of RM30,000 per month as loss of earnings awarded by the HCJ was appropriate as a nominal sum under the circumstances. (paras 39, 40, 41, 49, 50 & 51)

(4) In respect of loss of earnings, the HCJ had awarded the multiplier of eight months for the special damages period, 36 months for the pre-trial period and 5.5 years for the post-judgment period, which totaled up to 9.1 years. Accordingly, the multiplier for the plaintiff's loss of earnings should be 55 years – 44 years (age when he was injured) /2 = 5.5 years. In a situation where the plaintiff was no longer able to earn any income due to his injury, s. 28A(2)(d)(ii) of the Civil Law Act 1956 ('CLA') would apply. In this case, the multiplier for loss of earnings as per the statutory formula was 5.5 years and the 9.1 years allowed by the HCJ had exceeded that prescribed by s. 28A(2)(d)(ii) of the CLA. This was compounded by the 50 months which ought to be used for the pre-trial period instead of the 36 months given. In respect of pre-trial damages which was from the date of commencement of the action on 19 January 2016 to the date of delivery of decision on 6 March 2020 as stated by the HCJ, a period of 36 months was given. This clearly was an error in calculation as the period ought to be 49 months and 16 days rounded up to 50 months. (paras 53-58)

(5) As for special damages, the plaintiff's claim for hospital and medical expenses amounting to RM570,120.79 was allowed. D1 submitted that as it had been found solely liable, it had no reason or basis to claim against the plaintiff for any outstanding amount. SP2 had given evidence that she incurred the sum of RM6,547.92 monthly for physiotherapy (RM1,700) and acupuncture (RM4,847.92). There was no suggestion that such therapies were unnecessary and of no benefit. An amount of RM327,396 was allowed. (paras 63, 71 & 72)

(6) The plaintiff was seeking RM762,000 (RM15,240 x 50 months) for value of care. Value of care could be awarded by a court with the only issue on the amount to be attached to it. SP2 described her involvement in the plaintiff's care in ensuring that his wellbeing was taken care of such as feeding and medication and injection was on time and she spent on an average three hours a day caring for him. This care was to be contrasted with that of nursing care. She had two nurses including one with qualifications in physiotherapy to take care of the nursing needs.

The amount of RM16,000 was made for this item under special damages which was not appealed by either party. This averaged RM2,000 a month. This court thus awarded RM100,000 (RM2,000 x 50 months). This would be a reasonable amount premised by SP2's account of the care provided. (paras 73-76)

(7) For pain and suffering and loss of amenities of life, the distinction between damages for pain and suffering is that it depends on the plaintiff's personal awareness and capacity for suffering but damages for loss of amenities are awarded for the pain of deprivation – a substantial loss whether the plaintiff is aware or not. Hence, even if the plaintiff was in PVS, the pain of deprivation of the loss of amenities, whether or not he was aware of it, was a substantial loss. Under the circumstances, the HCJ's award of RM400,000 was not plainly wrong. For the above reasons and as per the table of damages annexed, some parts of the plaintiff's appeal were allowed and the rest dismissed. The same goes for D1. (paras 94, 96, 97 & 101)

Case(s) referred to:

Allen v. Walters [1935] CA 200 ***(refd)***
Donnelly v. Joyce [1973] All ER 475 ***(refd)***
Dr Teh Bee Tee v. Dr Joshua Mohanraj Daniel & Anor [2018] 6 CLJ 616 HC ***(refd)***
Farah Ahmed Naji Al-Sahhaf v. Dr Lee Weng Seng & Ors [2017] 1 MLJU 1725 ***(refd)***
Guan Soon Tin Mining Company v. Wong Fook Kum [1968] 1 LNS 43 FC ***(refd)***
Henry Siang Len v. UKM & Ors (No W-02(NCVC)(W)-349-02-2019) (Unreported) ***(refd)***
Inas Faiqah Mohd Helmi (A Child Suing Through Her Father And Next Friend; Mohd Helmi Abdul Aziz) v. Kerajaan Malaysia & Ors [2016] 2 CLJ 885 FC ***(refd)***
Latif Che Ngah & Anor v. Maimunah Zakaria [2002] 4 CLJ 442 HC ***(refd)***
Lee Yaw Long v. Dr Ganapathi Pillai & Ors (S2-22-299-2003) (Unreported) ***(refd)***
Lim Ah Chi v. Tan Ah Mui & Anor [1968] 1 LNS 67 FC ***(refd)***
Nurul Husna Muhammad Hafiz & Anor v. Kerajaan Malaysia & Ors [2015] 1 CLJ 825 HC ***(refd)***
Page v. Sheerness Steel Company Plc [1996] PIQR Q26 ***(refd)***
Rohgetana Mayathevan v. Dr Navin Kumar & Ors And Other Appeals [2017] 3 CLJ 311 CA ***(refd)***
Saripah Mahmud lwn. Govindaraju Venkatachalam & Satu Lagi [2011] 1 LNS 828 HC ***(refd)***
Tang Tiew Yong & Ors v. Wong Jong Hoon & Anor [2002] 7 CLJ 455 HC ***(refd)***
Totham v. King's College Hospital NHS Foundation Trust [2015] EWHC 97 ***(refd)***
Wells v. Wells [1998] 3 All ER 481 ***(refd)***
Wong Kuan Kay v. Rohaizad Othman & Anor; Majlis Perbandaran Johor Bahru Tengah (Third Party) & Another Appeal [2015] 4 CLJ 902 CA ***(refd)***
Yang Salbiah & Anor v. Jamil Harun [1981] 1 LNS 106 FC ***(refd)***
Zalizan Junoh lwn. Yusuf Ngel [2017] 1 LNS 1985 HC ***(refd)***

Legislation referred to:

Civil Law Act 1956, s. 28A(2)(c)(i), (d)(ii)

(Civil Appeal No: W-02(NCVC)(W)-566-04-2020)
For the appellant - Felix Raj & Ahmad Aizek Busu; M/s Felix Raj Chambers
For the respondent - MS Dhillon, KB Karthi & Jeremy Balang; M/s PS Ranjan & Co

(Civil Appeal No: W-02(NCVC)(W)-572-04-2020)
For the appellant - MS Dhillon, KB Karthi & Jeremy Balang; M/s PS Ranjan & Co
For the respondent - Felix Raj & Ahmad Aizek Busu; M/s Felix Raj Chambers

[Editor's note: Appeal from High Court, Kuala Lumpur; Suit No: WA-22NCVC-33-01-2016 (overruled in part).]

Reported by Suhainah Wahiduddin

JUDGMENT

See Mee Chun JCA:

Introduction

[1] There are two appeals before us heard together, both on the issue of quantum. They arise from the same medical negligence action. In Appeal 566 the appellant is Pantai Medical Centre (D1). In Appeal 572 the appellant is Fareed Reezal bin Arund suing by his wife and litigation representative (plaintiff).

[2] The plaintiff was 44 years old when he suffered serious brain injury in D1's hospital on 19 May 2015. This resulted in him being in a persistent vegetative state (PVS). He was born on 2 December 1970 and turns 55 on 2 December 2025. The judgment of the High Court was delivered on 6 March 2020.

Life Expectancy

[3] We deal first with the issue of life expectancy as that will set the multiplier for various heads of damages.

[4] It is not disputed that PVS is a condition described as "a clinical condition whereby the patient is not aroused and not aware of the surrounding and the cause of it is a brain injury". It is also not disputed that the PVS resulted from a non-traumatic injury as opposed to traumatic.

[5] Both the parties' quantum experts differed on the life expectancy of the plaintiff. The plaintiff's expert Dr Fazah Akhtar Hanapiah (SP1) gave it as nine to 20 years. D1's expert (Dr Lydia Abdul Latif, SD8) gave it as five to seven years and revised to nine to 12 years.

[6] SP1 had relied on two medical literatures for deriving a life expectancy of nine to 20 years. The first was *Zasler et al 2007* (*Zasler*) where a person with PVS in the age group of 40 years may live for another nine years (encl. 9/117). The second literature relied on was a study by *Jurgen Graf et al 2008* (*Graf*) which looked at the long term survival of patients following intensive care unit admission after cardiac arrest and estimated to live for another 20 years (encl. 9/117).

[7] The expert report of SD8 stated that the life expectancy of PVS based on literature is five to seven years from the event and less than 20% chance to live beyond ten years. Her personal clinical experience of managing patients with disordered consciousness is between the range of five to 12 years. Refer to encl. 9/194. She concluded by stating "life expectancy five to seven years (50%)" (encl. 9/195).

[8] The learned High Court Judge (HCJ) gave life expectancy to be ten years and stated as follows:

> I am taking a more conservative view derived from Prof Fazah's view of 16 years. (16-4)-15%: 10.2 (rounded up to 10).

The reference to Prof Fazah was to SP1 who gave a life expectancy of nine to 20 years where the 20 years was derived from *Graf*. The HCJ took 16 years to be SP1's view and deducted four years. This was attributed to a more conservative view.

[9] Putting that reasoning aside for the moment, we considered the submission by D1's counsel that the reliance on *Graf* was flawed as that study was based on patients without severe neurological disabilities.

[10] *Graf* stated:

> ... We believe our study is the first to demonstrate that patients who leave the hospital following cardiac arrest without severe neurological disabilities may expect fair long term survival and quality of life for reasonable expenses to the health care system.

(encl. 12/76).

On the face of it, this was therefore a study based on patients without severe neurological disabilities unlike the plaintiff who has PVS.

[11] When it was asked of SP1 if she would agree that the study had an express exclusion, it was not dealing with those with severe neurological conditions she replied as follows:

> A: The reason why they stated it specifically in their literature is because those with severe neurological conditions cannot answer their quality of life questionnaire. So they can only have the answers from patients who are cognitively alert to answer those questionnaire and that's the only reason why they excluded that out.
>
> Q: But that's a fundamental issue within this literature itself, Doctor. Surely you agree with that.
>
> A: Of course.

(encl. 7/60).

[12] She had earlier on, when asked if that was the key distinction that the plaintiff had suffered severe neurological disabilities but that the study focus was not on such patients and that was the caveat in the literature, explained thus:

> A: This is a very unique literature. One, it reflects the nearest to what has happened to En Fareed, with having a cardiopulmonary arrest while in hospital. It also has a special section describing specifically for those with neurological disorder. And if you look on page 34 Table 3, this is actually focussed on patient with low Glasgow Coma Scale, less than 6. So there is a group of participants within their studies that had poor neurological sequelae as a result of the brain injury. (encl. 7/59)

It was also explained that a GSC score of below six is severe (encl. 7/90).

[13] In re-examination, she also stated she considered *Graf* in estimating the plaintiff's life expectancy "because it was very specific to the group of patients that reflected how Fareed was or Fareed is at the moment" (encl. 7/114).

[14] Hence, the explanation given by SP1 in that *Graf* was specific to the plaintiff's case is probable in that the study did include patients with severe neurological disorder with GSC of less than six. We find that *Graf* can thus be accepted as the basis for a life expectancy with a range up to 20 years. *Graf* is the relevant supporting medical literature.

[15] It was submitted by D1's counsel that SP1 had admitted in cross-examination that the estimation was speculative. This was when she was asked by the judge "There must be some element of speculation" to which she replied "Yes" (encl. 7/62). It must be considered that soon after the judge said that, "case law has suggested it is a difficult task because you can never be definite. You have to make your judgment call as to what is the life expectancy, you can never be accurate," to which SP1 said, "I have to agree with that" (encl. 7/63). Granted this was not the typical question and answer, this shows there was nothing definite but does not necessarily show speculation as SP1 used a judgment call to rely on *Graf*, giving cogent reasons for so doing.

[16] After that line of questioning, SP1 was asked as to whether she was prepared to accept the possibility of between seven to ten years expectancy. She stated that based on her literature the range goes from nine years to 20 years (encl. 7/63) and she was firm and consistent in the range.

[17] Although the HCJ only stated he was taking a more conservative view, that was something he could have done. Hence instead of using 20 years as per SP1, he used a conservative 16. There was nothing plainly wrong in taking a more conservative view by taking the lower value of SP1's estimate of life expectancy.

[18] This is also in line with SP1's evidence to a question if she was prepared to accept a possibility of between seven to ten years expectancy as follows:

> A: Again based on my literature the range goes from 9 years to 20 years. If you really want to find that kind of baseline, median point, *Graf* has actually stated in their literature as well, the median, meaning the middle point of those with neurological deficit is 16.5 years after the event. So meaning that half the patients will live beyond 16.5, another half will not survive after the 16.5, it is a range. (encl. 7/63).

The median was arrived at by using "a life table formula which is a standardised way of measuring life expectancy that is accepted worldwide" (encl. 7/91).

[19] As stated by the Federal Court in *Inas Faiqah Mohd Helmi v. The Government of Malaysia & Ors* [2016] 2 CLJ 885, 895; [2016] 1 MLJ 1, 11:

> We are of the view that the standard of proof with regard to the assessment of future loss or damage is on the balance of probabilities but with a lower degree of certainty as to the occurrence of such loss or damage in the future. From the authorities, one can say that such a lower degree to be attached is best termed by the word "possibility", "chance", "risk", "danger" or "likelihood", they must also essentially be a substantial one and not speculative, and that the standard of proving such "possibility", "chance", "risk", "danger" or "likelihood" of the future damage is still, in our opinion, on a balance of probabilities.

[20] Hence the standard of proof for future loss or damage is one on a balance of probabilities for which *Graf* is preferred.

[21] SD8 had revised the plaintiff's life expectancy from five to seven years to nine to 12 years based on her clinical experience. The alternative submission by D1's counsel was to rely on the nine years as stated in *Zasler* and that such estimation also corresponds with SD8's revised range. It was further submitted that *Zasler* had been used in *Farah Ahmed Naji Al-Sahhaf v. Dr Lee Weng Seng & Ors* [2017] 1 MLJU 1725 involving a female patient in PVS who was six years old at the time of the incident.

[22] As we had earlier found that *Graf* could be used as the medical literature to support the basis of life expectancy of a patient in PVS, there was no reason why *Zasler* ought to be used. In *Farah*, there was no reference to *Graf*.

[23] When asked to comment on the difference in ranges used by her and SP1, SD8 said *Zasler* was also included by SP1 and gave the two ranges used and then stated "so I am not very familiar with that one paper but usually we will look at authors who write more papers in the field of brain injury and that is notably from *Zasler*" (encl. 9/37). As SD8 was not familiar with *Graf* she would not be in the best position to say that the range used in *Graf* cannot be relied on.

[24] However, having already started with the conservative value of 16 years, the HCJ then went on to deduct another four years. We find this to be plainly wrong as that was without basis where after having already started at the lower range value to reflect the conservative view, the four years should not be deducted.

[25] The life expectancy should therefore be 16 years.

One-Third Deduction On The Life Expectancy

[26] The HCJ had deducted 15% from the life expectancy of 16 years.

[27] The plaintiff's counsel had mounted a very vigorous opposition to such deduction. It was argued that once a multiplier had been decided there was no logic or justice in making a further judicial discount. Reference was made to *Wells v. Wells* [1998] 3 All ER 481, 497:

> There is no purpose in the courts making as accurate a prediction as they can of the plaintiff's future needs if the resulting sum is arbitrarily reduced for no better reason than that the prediction might be wrong. A prediction remains a prediction. Contingencies should be taken into account where they work in one direction, but not where they cancel out. There is no logic or justice in reducing the multiplier by 15% or 20% on an agreed expectation of life than there would be in increasing it by the same amount.

[28] Reference was also made to *Page v. Sheerness Steel Company Plc* [1996] PIQR Q26 where it was stated too that the application of the discount rate was not a rule of law that will bind a lower court.

[29] It has to be noted that *Wells* and *Page* were considered by the Court of Appeal in *Wong Kuan Kay v. Rohaizad Othman & Anor; Majlis Perbandaran Johor Baru Tengah (Third Party) & Another Appeal* [2015] 4 CLJ 902 which rejected the application of both cases. This was said at p. 914:

> [44] *Wells v. Wells* is an important decision and it is regarded as a true admonition of the House of Lords against discounting the mathematical life table ...
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> [45] The above cases may be useful as a guide to the policy in England but it is not useful in our jurisdiction. Lord Lloyd's remarks in *Wells v. Wells* were made in a context where the actuarial tables were available as an alternative to the conventional approach in quantifying the multiplier. In the absence of actuarial tables, the decision of the learned Sessions Court Judge cannot be regarded as erroneous.
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> [46] The determination of the appropriate multiplier is fraught with difficulty, for it is in large measure pure speculation. However in the absence of actuarial tables, it seems to us that the approach as adopted by our courts making adjustments for contingencies is the next most appropriate approach.

[30] *Wells* was not followed in *Wong Kuan Kay* and a deduction for contingencies appears to remain good law. A

[31] We have given anxious consideration to *Wong Kuan Kay* and the reasons advanced as to why there can be deductions for contingencies. One is the absence of actuarial tables where the approach in making adjustments for contingencies is considered the next most appropriate approach. B

[32] In pp. 912 and 913 the following was said:

> [38] It is important to note that the multiplier is not a real number of years. If a claimant were to be given his or her loss for a real number of years, it would result in considerable over-compensation since that figure would not take into account the effect of an accelerated receipt (ie, the fact that the plaintiff will receive the money at the time the calculation is made, rather than when the expense is actually incurred). Further, the plaintiff may live longer that anyone expected. Therefore, the courts have, as a matter of practice, made reduction for contingencies to cater for accelerated receipt, contingencies and all the variable and uncertainties with regard to the future ... C D
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> ...
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> [40] Therefore, the deduction of 1/3 for contingencies by the learned Sessions Court Judge relate essentially to the duration of expense and the possibility that the plaintiff will not require the anticipated level of care for the estimated length of time. To vary an award by the value of the chance the certain contingencies may occur is to assure neither over-compensation nor under-compensation, depending on whether or not the event occurs. In light of the considerations we have mentioned, we are of opinion that it would be reasonable to allow a discount for contingencies. ... E F

[33] The above passages would indicate that a deduction is allowed to assure neither over-compensation nor under-compensation. If a plaintiff were to be given the loss for a real number of years, it would result in considerable over-compensation since that figure would not take into account the effect of accelerated receipt or the plaintiff living longer than expected. G

[34] In this instant appeal, we were of the considered opinion that no deduction ought to be made when SP1 had already factored in the various contingencies. These were as follows:

> Factors that will effect life expectancy and survival time is multifactorial, which includes: H
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> i. Respiratory condition
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> ii. Cardiac status
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> iii. Seizures I
>
> iv. Nutritional status

A v. Electrolyte imbalance

vi. Skin integrity {pressure ulcers)

vii Aspiration

viii. Urinary complications/kidney failure

B ix. Endocrine function

x. Autonomic regulation

xi. Level of Care given

(encl. 9/116).

C **[35]** We considered too that damages are assessed on a once and for all basis. As stated in *Nurul Husna Muhammad Hafiz & Anor v. Kerajaan Malaysia & Ors* [2015] 1 CLJ 825, 850:

> ... The award of future damages or cost of future care in Malaysia is done
> D on once-and-for-all assessment basis, unlike in England where damages may be assessed periodically, following judgment on liability. Thus in Malaysia the victim cannot return to Court in the future to claim more damages because his or her injuries have worsened, or if unexpectedly the victim has more needs and the original award had proved inadequate.

E **[36]** To now make a one-third deduction would be a further deduction when the contingencies in arriving at the life expectancy by reference to *Graf* had already been factored. We find the HCJ was plainly wrong to have made the 15% deduction.

Multiplier

F **[37]** We therefore allow a multiplier of 16 years.

Loss Of Earnings

[38] The HCJ stated "In the absence of any documentary evidence I am awarding RM30,000 per month from 19 May 2015 to 15 January 2016."

G **[39]** The plaintiff had claimed a sum of RM74,200 per month for loss of earnings. He was an executive director in Innovative Swift Sdn Bhd (Innovative) and held 92% shares in it.

[40] The evidence at trial was clear in that no documents such as salary
H slips, bank statements or income tax declarations were produced. The plaintiff's wife (SP2) had admitted to that (encl. 8/45). It was also her evidence that his last drawn salary was RM15,500 per month (encl. 8/41).

[41] As against this was the plaintiff's 92% shareholding in Innovative which extrapolated from the company's profits for the period April 2014 to
I May 2015 of RM1,772,802.54 meant his share was RM1,531,595,34 or a monthly sum of RM127,635.95. The profit and loss of accounts are as in encl. 38/274-300. Reliance was also placed on the EPF statements of

Innovative to show the respective contribution of the employer and the plaintiff (encl. 11/162-168). It was submitted that the plaintiff's monthly loss of earnings be calculated on the basis:

> fixed monthly salary (RM15,500) + 92% of the monthly company profits calculated on a monthly basis (RM127,632.95) = RM143,132.95

[42] The plaintiff sought the amount of RM74,200 on the basis this was the amount pleaded for loss of earnings.

[43] The plaintiff's counsel referred to s. 28A(2)(c)(i) of the Civil Law Act 1956 (CLA) as follows:

> (2) In assessing damages under this section:
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> ...
>
> (c) in awarding damages for loss of future earnings the Court shall take into account:
>
> (i) that in the case of a plaintiff who has attained the age of fifty five years or above at the time when he was injured, no damages shall be awarded; and in any other case, damages for such loss shall not be awarded unless it is proved or admitted that the plaintiff was in good health but for the injury and was receiving earnings by his own labour or other gainful activity before he was injured;

[44] It was said that the plaintiff was in gainful activity in Innovative and was a substantial shareholder. While that may well be so, that provision cannot be said to displace the requirement of proof of the plaintiff's earnings in gainful activity.

[45] The company's accounts ended March 2016 in encl. 38/218 at p. 221 showed the plaintiff held 92% shareholding. The question is whether this *per se* entitles him to claim 92% of the profits in the company of RM1,772,802.54 which calculated to RM1,531,595,34 or a monthly sum of RM127,635.95 coupled with the EPF statements. Shorn of any evidence in the form of bank statements, income tax declarations or salary slips, there was therefore no proof. Further, it is not necessary that all the profits would have gone to him personally as it may have been ploughed back into the company.

[46] With regard to the EPF statements which were included in the bundle of documents, there was no evidence on those statements. SP2 said she was not involved in the preparation but a staff by the name of Nurul Ain was (encl. 8/32). It was Nurul's evidence as SP3 she was not involved in the preparation of EPF statements for 2015 (encl. 8/123).

[47] D1's alternative submission was that the EPF statement in encl. 11/162 would show the employer's contribution for the plaintiff in April 2015 was RM1,200. The contribution at 12% per month would show the salary

to be RM1,200 x 100/12 = RM10,000. As no salary slips were produced, the plaintiff should only be awarded a nominal sum RM5,000 per month as loss of earnings.

[48] There are cases which show that a loss of earnings can succeed in the absence of supporting documents. For instance, the Federal Court in *Lim Ah Chi v. Tan Ah Mui & Anor* [1968] 1 LNS 67; [1969] 1 MLJ 215 took judicial notice of the income of a "pow" seller, the High Court in *Saripah Mahmud lwn. Govindaraju Venkatachalam & Satu Lagi* [2011] 1 LNS 828 of a small scale fish and vegetable seller to be RM1,000 and the High Court in *Latif Che Ngah & Anor v. Maimunah Zakaria* [2002] 4 CLJ 442 to be RM1,500 for a plasterer. These cases concerned small income earners where documents will not be easily available. Our case concerns a company which generated profits for the period April 2014 to May 2015 of RM1,772,802.54 where documents should thus be available.

[49] Be that as it may, we considered the evidence of SP2 that the plaintiff was the executive director in the company with a monthly salary of RM15,500, car allowance of RM10,000 and petrol allowance of RM1,000 (Q&A 22). They have four children and at the material time the eldest was 18 and the youngest four (Q&A 7). They reside in a two and half storey house end lot in USJ Heights Subang Jaya (Q&A 57-58).

[50] We find that although there were no documents to prove a monthly salary of RM15,500 and allowances, the fact that he was an executive director in Innovative was not disputed. If that be the case, he must surely have been earning a certain amount of salary to support and sustain a family and maintain a station in life as befits an executive director.

[51] We find the sum of RM30,000 per month as loss of earnings awarded by the HCJ to be appropriate as a nominal sum under the circumstances. The oft-quoted principle laid down in *Guan Soon Tin Mining Company v. Wong Fook Kum* [1968] 1 LNS 43; [1969] 1 MLJ 99 is if the fact of damage is proved but not its amount, a claimant is entitled to nominal damages. Such an amount is left to be determined by the court taking into consideration the circumstances enumerated above.

Multiplier For Loss Of Earnings

[52] We note that this High Court suit was filed in January 2016 such that it is the pre-amendment s. 28A that still applies. Refer to s. 6 of the Civil Law (Amendment) Act 2019 which came into force on 1 September 2019.

[53] In respect of loss of earnings, the HCJ had awarded the multiplier of eight months for the special damages period, 36 months for the pre-trial period and 5.5 years for the post-judgment period. This totalled up to 9.1 years. D1's counsel submitted this was in contravention of s. 28A(2)(d)(ii) CLA as follows:

> (d) in assessing damages for loss of future earnings the Court shall take into account that:
>
> ...
>
> (ii) in the case of any other person who was of the age range extending between thirty one years and fifty four years at the time when he was injured, the number of years' purchase shall be calculated by using the figure 55, minus the age of the person at the time when he was injured and dividing the remainder by the figure 2.

Accordingly the multiplier for the plaintiff's loss of earnings should be 55 years - 44 years (age when he was injured)/2 = 5.5 years.

[54] In a situation where the plaintiff is no longer able to earn any income due to his injury, s. 28A(2)(d)(ii) CLA would apply. We therefore accept the contention of D1 in the light of the clear words of the aforesaid provision. This was also made clear in the High Court case of *Tang Tiew Yong & Ors v. Wong Jong Hoon & Anor* [2002] 7 CLJ 455; [2002] 7 MLJ 420, 427 that:

> ... there is no distinction between pre-trial and post-trial loss of earnings as loss of future earnings should be awarded in relation to the time when the plaintiff was injured; or put it another way, computation of loss of future earnings should commence from the date of injury.

Applying the statutory formula, the court there gave a multiplier of six months.

[55] In this instant case, the multiplier for loss of earnings as per the statutory formula is 5.5 years and the 9.1 years allowed by the HCJ has exceeded that prescribed by s. 28A(2)(d)(ii) CLA. This is compounded by the 50 months which ought to be used for the pre-trial period instead of the 36 months given. This will be apparent in the next area of discussion.

[56] The Court of Appeal case of *Rohgetana Mayathevan v. Dr Navin Kumar & Ors And Other Appeals* [2017] 3 CLJ 311; [2017] 4 MLJ 102, 108 which set out the different periods for damages was not in the context of s. 28A (2)(d)(ii) CLA. This can be confirmed by referring to Annexure A at pp. 120 to 125.

Different Periods For Damages

[57] By referring to *Rohgetana* at p. 108 (MLJ) there can be different periods regarding damages for the other heads of claims which has always been the case. The periods are the special damages period, the pre-trial and the post-judgment period.

[58] In respect of pre-trial damages which is from the date of commencement of the action on 19 January 2016 to the date of delivery of decision on 6 March 2020 as stated by the HCJ, a period of 36 months was given. This clearly is an error in calculation as the period ought to be 49 months and 16 days rounded up to 50 months.

[59] Arising from this is the issue of overlapping as raised by D1. It was submitted that acupuncture and reflexology (item A7) and physiotherapy (item A8) overlapped with physiotherapy (item D2, 48). There was therefore overlapping as the latter also runs from the date of injury. Hence the earlier awards for essentially the same item ought to be set aside. The same argument was advanced for cost of care (item A9 and item B10) and value of care (item B11) which overlapped with cost of nursing care (item D2, 50).

[60] We are of the considered opinion that there is no overlapping as these items all deal with different periods of time namely the special damages period, pre-trial period and the future damages period.

Table Of Damages

[61] We now consider the specific heads of damages under appeal which corresponds to the table of damages awarded by the HCJ with reference to the judgment in encl. 22/9-14. For case of reference, we have also prepared our table which sets out the HCJ award, the parties' appeals and our award.

[62] We note the urging of the plaintiff's counsel that the aim of damages in negligence is to compensate the victim for his loss and the computation is done by reference to the proper and reasonable cost of supplying that need. Reference was made to *Donnelly v. Joyce* [1973] All ER 475 that:

> The loss is the plaintiff's loss. The question from what source the plaintiff's needs have been met, ... are irrelevant ... His loss is the existence of the need for those special boots for those nursing services, the value of which for the purposes of damages – for the purpose of ascertainment of the amount of his loss – is the proper and reasonable costs of supplying those needs ... So far as the defendant is concerned, the loss is not someone else's loss. It is the plaintiff's loss.

Special Damages

Item 1 – Hospital And Medical Expenses

[63] The plaintiff claimed RM570,120.79 for which SP2 said they had paid RM306,374 (encl. 8/48) and D1 had not disputed such an amount had been received. The issue then is whether the plaintiff should be awarded only what it had paid rather than the amount of RM570,120.79. D1 submitted that as it had been found solely liable, it had no reason or basis to claim against the plaintiff for any outstanding amount.

[64] On the strength of the authorities cited by the plaintiff (*Allen v. Walters* [1935] CA 200, *Lee Yaw Long v. Dr Ganapathi Pillai & Ors* (S2-22-299-2003) and *Dr Teh Bee Tee v. Dr Joshua Mohanraj Daniel & Anor* [2018] 6 CLJ 616) there can be a valid claim to recover unpaid medical expenses. The facts in *Dr Teh Bee Tee* differ slightly in that the medical expenses were borne by the employer but the principle can still remain.

[65] The amount of RM570,120.79 is confirmed.

Item 3 – Loss Of Earnings

[66] In view of our earlier finding that s. 28A(2)(d)(ii) CLA would apply to a total loss of earnings situation such as that of the plaintiff, the number of years purchase or the base figure is 5.5. The 9.1 years awarded by the HCJ when awarding for the periods of special damages and pre-trial fell into error. We set aside this award. There should only be one award using 5.5 years.

Items 7, 8 And 9 – Acupuncture And Reflexology, Physiotherapy And Cost Of Care

[67] D1 appears to have no issue with the amount but rather they be set aside for overlapping. As stated earlier there is no overlapping. The award of the HCJ is confirmed.

Item 10 – Home Renovation

[68] This was incurred when the home tiles had buckled. Although this buckling happened before the event it was something that still had to be done to avoid the dust from gathering under the tiles before the plaintiff returned home. The amount of RM11,500 is confirmed.

Pre-trial Damages

Item 14 – Loss Of Earnings

[69] For the reasons given earlier, we set aside this award.

Item 13 – Travel Expenses

Item 15 – Medicines And Nutritional Supplements

Item 16 – Diapers, Creams And Other Personal Items

[70] There was no appeal from D1 on these items which meant the base amount was not an issue. The plaintiff appealed on the duration of 36 months which we had earlier found to be 50 months. The plaintiff's appeal for the amounts of RM25,000 (item 13, RM500 x 50 months), RM100,000 (item 15, RM2,000 x 50 months) and RM37,500 (item 16, RM750 x 50 months) is allowed.

Item 17 – Cost Of Therapies

[71] SP2 had given evidence that she incurred the sum of RM6,547.92 monthly for physiotherapy (RM1,700) and acupuncture (RM4.847.92). There was no suggestion that such therapies were unnecessary and of no benefit. An amount of RM327,396 (RM6,547,92 x 50 months) is allowed. The same base amount as used by the HCJ is used.

Item 18 – Cost Of Care

[72] We will only vary the duration and not the base amount of RM8,000 which would be RM400,000 (RM8,000 x 50 months).

Item 19 – Value Of Care

[73] The HCJ had not made any award on this item. The plaintiff is now seeking RM762,000 (RM15,240 x 50 months). The amount of RM15,240 was a 25% discount from RM20,320 derived from the purported unchallenged evidence of SD8 of nursing care providers charging RM25 hourly for day shifts and RM35 hourly for night shifts and weekends. Reference was made to *Totham v. King's College Hospital NHS Foundation Trust* [2015] EWHC 97 (QB) that care provided by family members should be given at a commercial rate subject to a discount of 25%.

[74] It is clear that value of care can be awarded by a court with the only issue on the amount to be attached to it. Although *Totham* did state a commercial rate with a 25% discount can be given, one has to consider what was the care provided by the family.

[75] In her Q&A 49 SP2 described her involvement in the plaintiff's care in ensuring that his well-being is taken off such as feeding and medication and injection is on time and in Q&A 50 she spends on an average three hours a day caring for him which is more on touching, talking and checking, encl. 9/146-148. This care is to be contrasted with that of nursing care. The subsequent evidence of SP2 in her Q&A 51 shows she has two nurses including one with qualifications in physiotherapy to take care of the nursing needs.

[76] We note that an amount of RM16,000 was made for this item under special damages which was not appealed by either party. This averages to RM2,000 a month. We would therefore award RM100,000 (RM2,000 x 50 months). This would be a reasonable amount premised by SP2's account of the care provided.

Life Expectancy And Multiplier

[77] For the reasons given earlier we find that life expectancy is 16 years.

The Cost Of Equipment, Appliances, Medicine And Nutrition

[78] The amounts awarded were based on the lifespan of the equipment and frequency of consumption or application of the medicines. The amounts appealed from stems from the multiplier used where the plaintiff had used 20 years and D1 nine years.

[79] The number of purchases for equipment where the lifespan is two years will be eight, for a lifespan of five years will be three, for a lifespan of eight years will be two and for a lifespan of ten years will be two. These are in respect of items 20 (hospital bed, RM3,000 x 2 = RM6,000), 21 (alternating pressure mattress, RM8,000 x 2 = RM16,000), 22 (tilt in space wheelchair, RM12,000 x 2 = RM24,000), 23 (commode chair, RM500 x 3 = RM1,500), 24 (electric hoist, RM5,000 x 2 = RM10,000), 25 (shower trolley, RM10,000 x 2 = RM20,000), 26 (suction machine, RM700 x 3 =

RM2,100), 27 (nebulizer, RM700 x 3 = RM2,100), 28 (oxygen concentrator, RM5,000 x 3 = RM15,000), 29 (pulse oximeter with alarm, RM300 x 3 = RM900), 30 (digital blood pressure monitor, RM250 x 3 = RM750), 31 (digital ear thermometer, RM150 x 3 = RM450), 32 (glucometer, RM200 x 3 = RM600), 33 (orthotic devices, RM1,500 x 8 = RM12,000), 39 (tilt table and table top, RM10,000 x 2 = RM20,000), 40 (adaptable vehicle with wheelchair anchoring system, RM140,000 x 2 = RM280,000), 42 (home enriching environment, RM5,000 x 2 = RM10,000), and 43 (mobile home monitoring system, RM5,000 x 3 = RM15,000).

[80] The plaintiff's appeal on consumables being on a monthly basis is allowed on 16 years. Item 34 will be varied to RM192,000 (RM1,000 x 12 months x 16). The same too for item 35 on nutritional care to RM134,400 (RM700 x 12 months x 16). The amount for item 36 on PEG tube replacement which has a one-year lifespan will be varied to RM6,400 (RM400 x 16). The amount on item 37 on tracheostomy tube replacement which has a six-month lifespan will be varied to RM22,400 (RM700 x 2 x 16). The amount on item 46 for oral baclofen will be varied to RM288,000 (RM1,500 x 12 months x 16).

[81] We confirm the decision that no award be given for item 38 (ceiling mounted hoist) for the reason accepted by the HCJ that the caretaker is competent to move patients using the hoist and commode chair. We further confirm his decision not to award items 44 on intrathecal baclofen pump unit and 45 on intrathecal baclofen drug and refill units for the reason that oral baclofen medication taken daily would be sufficient.

Cost Of Medical Services, Therapies And Others

Item 47 – Medical Consultations

[82] The main issue relates to the cost of a medical consultation. SD8 had stated in her report the cost would be RM180 to RM300 (encl. 9/196). The HCJ based his award on the basis of RM180 and we find no reason to depart from it. We would only vary to reflect the 16 years for an amount of RM11,520 (RM180 x 4 x 16).

Item 48 – Physiotherapy

[83] As per SD8's evidence, the rates for physiotherapy in her hospital are between RM130 to RM180 and that home physiotherapy is RM220 (encl. 9/82-83). Frequency of twice a week was not an issue. However, the plaintiff contended that home physiotherapy of once a month had not been included when both experts had agreed on it. The amount is therefore varied to RM258,560 (RM130 x 2 x 52 x 16 = RM216,320 + RM220 x 12 x 16 = RM42,240).

Item 49 – Occupational Therapy

[84] We confirm the decision of the HCJ not to allow this item as per SD8's evidence that occupational therapy for the plaintiff in PVS where improving the function is not the goal.

Item 50 – Home Nursing Care

[85] The HCJ had awarded a monthly amount of RM6,000 based on SD8's evidence this would be the sum. SP1's evidence was an estimate of RM8 per hour which would amount to RM5,900. The plaintiff had submitted taking into account SD8's evidence of RM25 hourly rates for daytime and RM35 hourly rates for Sundays and weekends would give an amount of RM20,230.

[86] In this regard, we find that SD8's evidence on the hourly rates were in the context of the potential rates for Sundays and weekends. These may be found in encl. 9/86. Earlier on she stated nursing care would cost RM6,000. Hence the evidence of hourly rates mean just that and are not to be construed as the evidence for monthly nursing care.

[87] The amount will be varied only on the duration to RM1,152,000 (RM6,000 x 12 x 16).

Item 51 – Respite Care

[88] The only issue was on the duration. We vary the amount to RM80,000 (RM5,000 x 16).

Item 52 – Ambulance Services

[89] The only issue was on the duration. We vary the amount to RM19,200 (RM150 x 8 x 16).

Item 53 – Hospital Admissions

[90] The issues were on duration and whether this was required once or twice a year. On the basis of SD8's report that the plaintiff may require hospital admissions one to two times a year, the amount is varied to RM320,000 (RM10,000 x 2 x 16).

Travel Expenses

[91] It was contended the amount of RM120,000 ought to be set aside. We note however there was no appeal by D1 on this but only on the duration. We vary the amount to RM192,000 (RM12,000 x 16).

Value Of Care

[92] For the reasons given earlier on pre-trial value of care, we do not agree with the monthly amount of RM15,240. We vary the amount to reflect the duration to RM288,000 (RM18,000 x 16).

Future Loss Of Earnings

[93] For the reasons given earlier, we allow loss of earnings to be calculated in accordance with s. 28A(2)(d)(ii) CLA where the number of years purchase or the base figure is 5.5 years. The amount as awarded by the HCJ of RM1,980,000 (RM30,000 x 12 x 5.5) is confirmed.

Pain And Suffering And Loss Of Amenities Of Life

[94] The HCJ awarded RM400,000. The plaintiff contends it should be RM500,000 where the quantum for pain and suffering and loss of amenities of life for a brain damage and its sequelae range from RM500,000 (*Henry Siang Len v. UKM & 17 Ors* in Court of Appeal No W-02(NCVC)(W)-349-02-2019) and RM400,000 (*Farah* – brain damaged infant, multiplier of 5 years).

[95] D1 contends it to be to between RM180,000 to RM240,000. This was on the basis that the revised compendium of personal injury awards dated 6 July 2018 gives bedridden state with awareness a range of RM300,000 to RM420,000 and PVS (coma) a range of RM180,000 to RM240,000. In *Zalizan Junoh lwn. Yusuf Ngel* [2017] 1 LNS 1985; [2017] MLJU 2027 the plaintiff was in a bedridden state with awareness and was awarded RM380,000.

[96] As noted in *Yang Salbiah & Anor v. Jamil Harun* [1980] 1 LNS 106 referred to in *Zalizan*, the distinction between damages for pain and suffering is that it depends on the plaintiff's personal awareness and capacity for suffering but damages for loss of amenities are awarded for the pain of deprivation – a substantial loss whether the plaintiff is aware or not. Hence even if the plaintiff is in PVS, the pain of deprivation of the loss of amenities whether or not he is aware of it is a substantial loss. This is when compared to the infant in *Farah*, he has had a full appreciation of life.

[97] Under the circumstances, we find the award of RM400,000 to be not plainly wrong.

Costs

[98] Costs of RM50,000 was awarded. The plaintiff contended this was a manifestly low sum when compared to 36 days of non-consecutive days of trial, 13 witnesses including five experts and extensive research. A sum of RM350,000 for costs including RM65,063.12 as out of pocket expenses was suggested. It was explained the plaintiff had no opportunity to submit on the issue of costs.

[99] The response of D1 was that the suggested costs was to cover the costs of suing all five defendants. The claims against D3 to D5 was withdrawn before trial while the claim against D2 was dismissed. The plaintiff could have submitted on costs during the submissions or even during the oral submissions or before the date of decision.

[100] We are of the considered opinion that costs should include getting up and out of pocket expenses and that a reasonable amount would be RM100,000.

Conclusion

[101] For the above reasons and as per the table of damages annexed, some parts of the plaintiff's appeal are allowed and the rest dismissed. The same goes for D1.

[102] We further award costs of RM20,000 to the plaintiff for each appeal, subject to allocatur.

Annexure: Table Of Damages

No	Item	High Court	Dft 1 in Appeal 566	Plaintiff in Appeal 572	The Court of Appeal
A	**Special Damages** (8 mths : From 19 May 2015 to 19 Jan 2016)				
1.	Hospital and medical expenses	RM570,120.79	RM306,354	No appeal	D1's appeal dismissed. RM570,120.79
2.	Travelling Expenses	RM15,364.54	No appeal	No appeal	–
3	Loss Of earnings	RM240,000 (RM30,000 x 8 mths)	Nil -or- Only a Nominal amount	RM593,600 (RM74,200 x 8 mths)	P's appeal dismissed. HCJ award set aside
4.	Machines, appliances and equipment	RM15,092.95	No appeal	No appeal	–
5.	Medicines And nutrition	RM2,022.70	No appeal	No appeal	–
6.	Diapers, Wipes, etc	RM6,000	No appeal	No appeal	–
7.	Acupuncture and reflexology	RM26,850	nil	No appeal	D1's appeal dismissed. RM26,850

8.	Physiotherapy	RM9,350	Nil	No appeal	D1's appeal dismissed. RM9,350
9.	Cost of care	RM68,000	Nil	No appeal	D1's appeal dismissed. RM68,000
10.	Home renovations	RM11,600	Nil	No appeal	D1's appeal dismissed. RM11,600
11.	Cost of services by the Plaintiff's wife	RM16,000	No appeal	No appeal	–
12.	The cost of holiday	Not allowed	No appeal	No appeal	–
B	**Pre-Trial Damages (from 19 January 2016 to 6 March 2020)**			***appeal Only on duration**	
	Duration	36 mths	No appeal	50 mths	P's appeal allowed. 50 mths
13	Travelling expenses	RM18,000 (RM500 x 36 mths	No appeal	RM25,000 (RM500 x 50 mths)	P's appeal allowed. RM25,000
14.	Loss of earnings	RM1,080,000 (RM30,000 x 36 mths)	Nil -or- Only a nominal amount	RM3,710,000 (RM74,200 x 50 mths)	P's appeal dismissed. HCJ award set aside.
15.	Medicines and nutritional supplements	RM72,000 (RM2,000 x 36 mths)	No appeal	RM100,000 (RM2,000 x 50 mths)	P's appeal allowed. RM100,000
16.	Diapers, creams and Other personal items	RM27,000 (RM750 x 36 mths)	No appeal	RM37,500 (RM750 x 50 mths)	P's appeal allowed. RM37,500

17.	Cost of therapies	RM235,725 (RM6,547.92 x 36 mths)	Nil	RM327,396 (RM6,547.92 x 50 mths)	D1's appeal dismissed. P's appeal allowed. RM327,396
18.	Cost of care	(RM288,000 (RM8,000 x 36 mths	Nil	RM1,0160 (RM20,320 x 50 mths)	D1's appeal dismissed. P's appeal allowed for lesser amount RM400,000 (RM8,000 x 50 mths)
19.	The value of care by the Plaintiff's wife	Not allowed	No appeal	RM762,000 (RM15,240 x 50 mths)	P's appeal allowed for lesser amount. RM100,000 (RM2,000 x 50 mths)
C	**The multiplier**	**10** (16 yrs less 4 yrs and less 15%	**6** (9 years less 1/3)	**20** (no deductions)	16 years
D	**Future Damages**				
D1	The cost of equipment, appliances, medicine and nutrition				
20.	Hospital bed (10 yrs lifespan)	RM3,000	RM3,000	RM6,000 (RM3,000 x 2 purchases)	P's appeal allowed. RM6,000
21.	Alternating pressure mattress (8 yrs Lifespan)	RM16,000 (RM8,000 x 2 purchases)	RM8,000	RM24,000 (RM8,000 x 3 purchases)	Both appeals dismissed. RM16,000
22.	Tilt-in-space Wheelchair (10 yrs lifespan)	RM12,000	RM12,000	RM24,000 (RM12,000 x 2 purchases)	P's appeal allowed. RM24,000

23.	Commode chair (5 yrs lifespan)	RM1,000 (RM500 x 2 purchases)	RM1,000 (RM500 x 2 purchases)	RM2,000 (RM500 x 4 purchases)	P's appeal allowed for lesser amount RM1,500 (RM500 x 3)
24.	Electric hoist (10 yrs lifespan)	RM5,000	RM5,000	RM10,000 (RM5,000 x 2 purchases)	P's appeal allowed. RM10,000
25.	Shower trolley (8 yrs lifespan)	RM20,000 (RM10,000 x 2 purchases)	RM10,000	RM30,000 (RM10,000 x 3 purchases)	Appeals dismissed. RM20,000
26.	Suction Machine (5 yrs lifespan)	RM1,400 (RM700 x 2 purchases)	RM1,400 (RM700 x 2 purchases)	RM2,800 (RM700 x 4 purchases)	P's appeal allowed for lesser amount. RM2,100 (RM700 x 3)
27	Nebulizer (5 yrs lifespan)	RM1,400 (RM700 x 2 purchases)	RM1,400 (RM700 x 2 purchases)	RM2,100 (RM700 x 4 purchases)	P's appeal allowed for lesser amount. RM2,100 (RM700 x 3)
28.	Oxygen concentrator (5 yrs lifespan)	RM10,000 (RM5,000 x 2 purchases)	RM10,000 (RM5,000 x 2 purchases)	RM15,000 (RM5,000 x 4 purchases)	P's appeal allowed for lesser amount. RM15,000 (RM5,000 x 3)
29.	Pulse oximeter with alarm (5 yrs lifespan)	RM600 (RM300 x 2 purchases)	RM600 (RM300 x 2 purchases)	RM1,200 (RM300 x 4 purchases)	P's appeal allowed for lesser amount. RM900 (RM300 x 3)
30.	Digital blood pressure monitor (5 yrs lifespan)	RM500 (RM250 x 2 purchases)	RM500 (RM250 x 2 purchases)	RM1,000 (RM250 x 4 purchases)	P's appeal allowed for lesser amount RM750 (RM250 x 3)
31.	Digital ear thermometer (5 yrs lifespan)	RM300 (RM150 x 2 purchases)	RM300 (RM150 x 2 purchases)	RM600 (RM150 x 4 purchases)	P's appeal allowed for lesser amount. RM450 (RM150 x 3)

32.	Glucometer (5 yrs lifespan)	RM400 (RM200 x 2 purchases)	RM400 (RM200 x 2 purchases)	RM800 (RM200 x 4 purchases)	P's appeal allowed for lesser amount. RM600 (RM200 x 3)
33.	Orthotic devices (2 yrs lifespan)	RM7,500 (RM1,500 x 5 purchases)	RM4,500 (RM1,500 x 3 purchases)	RM15,000 (RM1,500 x 10 purchases)	Both appeals dismissed. RM12,000 (RM1,500 x 8)
34.	consumables (monthly)	RM120,000 (RM1,000 x 12 mths x 10)	RM72,000 (RM1,000 x 12 mths x 6)	RM240,000 (RM1,000 x 12 mths x 20)	D1's appeal dismissed. P's appeal allowed for lesser amount. RM192,000 (RM1,000 x 12 mths x 16)
35.	Nutritional care (monthly)	RM84,000 (RM700 x 12 mths x 10)	RM50,400 (RM700 x 12 mths x 6)	RM168,000 (RM700 x 12 mths x 20)	D1's appeal dismissed. P's appeal allowed for lesser amount. RM134,400 (RM700 x 12 mths x 16)
36.	PEG tube replacement (1 yr lifespan)	RM4,000 (RM400 x 10)	RM2,400 (RM400 x 6)	RM8,000 (RM400 x 20)	D1's appeal dismissed. P's appeal allowed for lesser sum. RM6,400 (RM400 x 16)
37.	Tracheostomy tube replacements (6 months lifespan)	RM14,000 (RM700 x 2 x 10)	RM8,400 (RM700 x 2 x 6)	RM28,000 (RM700 x 2 x 20)	P's appeal allowed for lesser amount. RM22,400 (RM700 x 2 x 16)
38.	Ceiling mounted hoist (10 yrs lifespan)	Not allowed	No appeal	RM24,000 (RM12,000 x 2 purchases)	P's appeal dismissed.

39.	Tilt table and table top (10 yrs lifespan)	RM10,000	RM10,000	RM20,000 (RM10,000 x 2 purchases)	P's appeal allowed. RM20,000
40.	Adapted vehicle with wheelchair anchoring system (10 yrs lifespan)	RM140,000	RM140,000	RM280,000 (RM140,000 x 2)	P's appeal allowed. RM280,000
41.	ramps	RM5,000	No appeal	No appeal	–
42	Home enriching environment (10 yrs lifespan)	RM5,000	RM5,000	RM10,000 (RM5,000 x 2 purchases)	P's appeal allowed. RM10,000
43.	Mobile home monitoring system (5 yrs lifespan)	RM10,000 (RM5,000 x 2)	RM5,000	RM20,000 (RM5,000 x 4 purchases)	P's appeal allowed for lesser amount RM15,000 (RM5,000 x 3)
44.	Intrathecal Baclofen pump unit (5 yrs lifespan)	Not allowed	No appeal	RM36,000	P's appeal dismissed.
45	Intrathecal baclofen drugs and refill kits	Not allowed	No appeal	RM75,000 (RM15,000 x 5)	P's appeal dismissed.
46.	Oral baclofen (monthly)	RM180,000 (RM1,500 x 12 mths x 10)	RM108,000 (RM1,500 x 12 mths x 6)	RM360,000 (RM1,500 x 12 mths x 20)	D1's appeal dismissed. P's appeal allowed for lesser amount. RM288,000 (RM1,500 x 12 mths x 16)

D2	Cost of medical services, therapies and others				
47.	Medical consultations (4 times a yr)	RM7,200 (RM180 x 4 x 10)	RM4,320 (RM180 x 4 x 6)	RM24,000 (RM300 x 4 x 20)	D1's appeal dismissed. P's appeal for lesser amount allowed. RM11,520 (RM180 x 4 x 16)
48.	physiotherapy (twice a week)	RM104,000 (RM100 x 2 x 52 x 10)	RM62,400 (RM100 x 2 x 52 x 6)	RM427,200 (RM180 x 2 x 52 x 20) including for home physiotherapy RM220 x 12 x 20)	D1's appeal dismissed. P's appeal for lesser allowed amount. RM258,560 (RM130 x 2 x 52 x 16 = RM216,320, including home physiotherapy (RM220 x 12 x 16 = RM42,240)
49.	Occupational Therapy (twice a week)	Not allowed	No appeal	RM208,600 (RM100 x 2 x 52 x 20)	P's appeal dismissed.
50.	Home nursing care (monthly)	RM720,000 (RM6,000 x 12 x 10)	RM432,000 (RM6,000 x 12 x 6)	RM4,876,800 RM20,320 x 12 x 20)	D1's appeal dismissed. P's appeal allowed for lesser amount. RM1,152,000 (RM6,000 x 12 x 16)
51.	Respite care (yearly)	RM50,000 (RM5,000 x 10)	RM30,000 (RM5,000 x 6)	RM100,000 (RM5,000 x 20)	D1's appeal dismissed. P's appeal allowed for lesser amount. RM80,000 (RM5,000 x 16)

52.	Ambulance services (8 trips a yr)	RM12,000 (RM150 x 8 x 10)	RM7,200 (RM150 x 8 x 6)	RM24,000 (RM150 x 8 x 20)	D's appeal dismissed. P's appeal allowed for lesser amount. RM19,200 (RM150 x 8 x 16)
53.	Hospital admissions (yearly)	RM100,000 (RM10,000 x 10)	RM60,000 (RM10,000 x 6)	RM400,000 (RM10,000 x 2 x 20)	D1's appeal dismissed. P's claim allowed for lesser amount. RM320,000 (RM10,000 x 2 x 16)
D3	Travel expenses	RM120,000 (RM12,000 x 10)	RM72,000 (RM12,000 x 6)	RM240,000 (RM12,000 x 20)	D1's appeal dismissed. P's appeal allowed for lesser amount. RM192,000 (RM12,000 x 16)
D4	The value of care by family members	RM180,000 (RM18,000 x 10)	Nil	RM3,657,600 (RM15,240 x 12 x 20)	D1's appeal dismissed. P's appeal allowed for lesser amount. RM288,000 (RM18,000 x 16)
D5	Future loss of earnings	RM1,980,000 (RM30,000 x 12 mths x 5.5)	Nil -or- Only a nominal amount	RM4,897,200 (RM74,200 x 12 mths x 5.5)	Both appeals dismissed. RM1,980,000
E	Pain and suffering and loss of amenities of life	RM400,000	Between RM180,000 and RM240,000	RM500,000	Both appeals dismissed. RM400,000

	Costs	RM50,000	No appeal	RM350,000 (including RM65,036.12 as out-of-pocket expenses)	P's appeal on costs for lesser amount allowed. RM100,000